IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 590 OF 1992

Girishchandra Ramchandra Sharma .. Petitioner

versus

Shreeram Ramdhari Moryaji .. Respondents

...

Mr.Rajesh S. Datar for the petitioner.

Mr.S.M. Oak for the respondent.

CORAM : D.G. KARNIK, J

DATED : 24th August 2004.

ORAL JUDGEMENT:-

1. By this petition, the petitioner challenges the judgement and order dated 5th October 1991 passed by the learned 3rd Addl. District Judge, Thane dismissing Civil Appeal No.239 of 1987 and thereby confirming the dismissal of a suit for possession filed by the petitioner.

. The facts which are relevant for the purpose of decision of the appeal are given below:

2. The petitioner claiming to be an owner of the property bearing Shop No.7A in Krishna Trading Centre, Thane (hereinafter referred to as 'the suit premises') filed a suit for possession against the respondent tenant on the ground of default. Prior to the suit, the petitioner had issued to the respondent a notice on 13th January 1980 claiming arrears of rent from October 1978 at the rate of Rs.40/- per month plus taxes. The trial Court held that respondent was in arrears of rent for a period of more than six months and had failed and neglected to pay the same despite notice of demand. The trial Court also held that the notice of demand was legal and valid. The trial Court however held that the petitioner was not the owner of the suit premises which belonged to the petitioner's wife and therefore, the petitioner was not entitled to file a suit for possession. In view of this, the trial Court dismissed the suit. On appeal, the appellate Court confirmed that the respondent was in arrears

of rent for a period of more than six months and had failed to pay the same in spite of a notice of demand dated 13th January 1980 issued by the petitioner. The appellate Court also confirmed the finding of the lower Court that the petitioner had no authority to file the suit as the suit premises belonged to the petitioner's wife. The appellate Court therefore, dismissed the suit of the petitioner. That judgement is impugned in this appeal.

3. The learned counsel for the petitioner submits that the respondent was not entitled to deny the title of the petitioner to the suit premises as the suit premises were given on rent to the respondent by the petitioner. The fact that the suit premises were let out by the petitioner was admitted by the respondent in his written statement in the following words

> "In fact, the plaintiff himself leased the wooden cabin to the defendant in the year 1967 or 1968 with implied consent of Mrs.Sharma and since then, he himself is collecting the rent from the defendant and therefore, in that sense, the plaintiff is the landlord of the defendant in respect of the wooden cabin (suit premises)"

Earlier, the respondent had filed an application for determination of the amount of standard rent bearing Misc. Application no.158 of 1968 only against the petitioner without joining petitioner's wife as a party. In the said standard rent application, a compromise purshis was filed by the petitioner and the respondent on 19th June 1970. By the said compromise purshis, the respondent admitted the petitioner to be the landlord of the premises and the amount of standard rent was fixed by compromise at Rs.40/- per month. A copy of the said compromise purshis is filed on record at Exhibit-29. With the help of the learned counsel for the parties, I have perused the pleadings of the parties filed in the suit bearing regular Civil Suit no.347 of 1980 from which the present Writ Petition arises. In paragraph nos.1 and 2 of the plaint, the petitioner pleaded that he was a landlord and the respondent was a tenant of the suit premises. In paragraph no.1 of the written statement, the defendant has stated: "as a matter of fact, the plaintiff has duly accepted this defendant as a lawful tenant from 1st September 1968." Thus, the relationship of the landlord and

the tenant was admitted. Further, the respondent admitted that the suit premises were leased to him by the petitioner with the consent of his wife. He never pleaded that petitioner was not the owner and the landlord of the suit premises nor did he ever plead that the petitioner had no right to file the suit not being an owner and landlord of the suit premises. An additional written statement was filed by the respondent on 19th September 1986 alleging that the demand notice was not proper as it was given in respect of a different premises. Even in this additional written statement, the respondent did not plead that the petitioner was not an owner and landlord of the suit premises. There is not a whisper in the written statement denying title of the petitioner nor is there any pleading that the petitioner was only a rent collector. On the other hand, the parties proceeded with the trial on the assumption that the petitioner was an owner of the suit premises. In any event, there is a clear admission by the respondent in the written statement that the suit premises were leased to him by the petitioner. Section 116 of the Evidence Act lays down that no tenant of a immovable property shall, during the

continuance of the tenancy, be permitted to deny that the landlord of such tenant at the beginning of the tenancy had no title to such immovable property. In view of the clear bar contained under section 116 of the Evidence Act, the respondent was not entitled to contend and had rightly not contended that petitioner was not the owner of the suit property at the time of inception of the tenancy. It is not his case that after the inception of the tenancy, the petitioner transferred the property to his wife and ceased to be the owner and the landlord. The trial Court, therefore, erred in holding that the petitioner was not the owner and the landlord of the property and was not entitled to file the suit.

4. Learned counsel for the respondent strongly relies upon a decision of this Court in Kamaruddin Masjit Trust Vs. Abdul Rahiman Fakiruddin reported in 1986 Mh.L.J 543 in which it was held that a rent collector cannot be regarded as a landlord for the purpose of a suit for eviction under section 12 and 13 of the Bombay Rents Hotel Lodging & Rates Control Act 1947 (for short 'the Act'). It was also held therein that a suit for eviction under

the Act can be filed only by an owner and not by a rent collector. The authority has no application to the facts of the present case because in the present case, the respondent never denied the title of the petitioner and in fact, in the written statement he has admitted the title by stating that the suit property was let out to him by the petitioner.

5. Both the Courts below have concurrently held that the respondent was in arrears of rent for a period of more than six months and despite notice of demand had failed to pay the same within a period of one month. Both the Courts below have also held that the notice of demand which was issued by the petitioner was legal and valid. There is no dispute regarding the standard rent. As such, the case clearly falls under section 12(3)(a) of the Bombay Rent and Lodging Houses Rates Control Act 1947 and the petitioner is entitled to a decree for possession.

6. For these reasons, petition is allowed. Rule is made absolute in terms of prayer clause (a). The respondent shall pay costs of the

petitioner and bear hiw own.

7. At the request of the learned counsel for the respondent, and with the consent of the learned counsel for the petitioner, the respondent is granted six months time to vacate the suit premises subject to his filing of an undertaking in the Court in the usual form within a period of four weeks.

D.G. KARNIK, J